

**RECORD EVIDENCE OF
COMPETITIVE HIGH-CAPACITY
FACILITIES DEPLOYMENT**

Office Of General Counsel

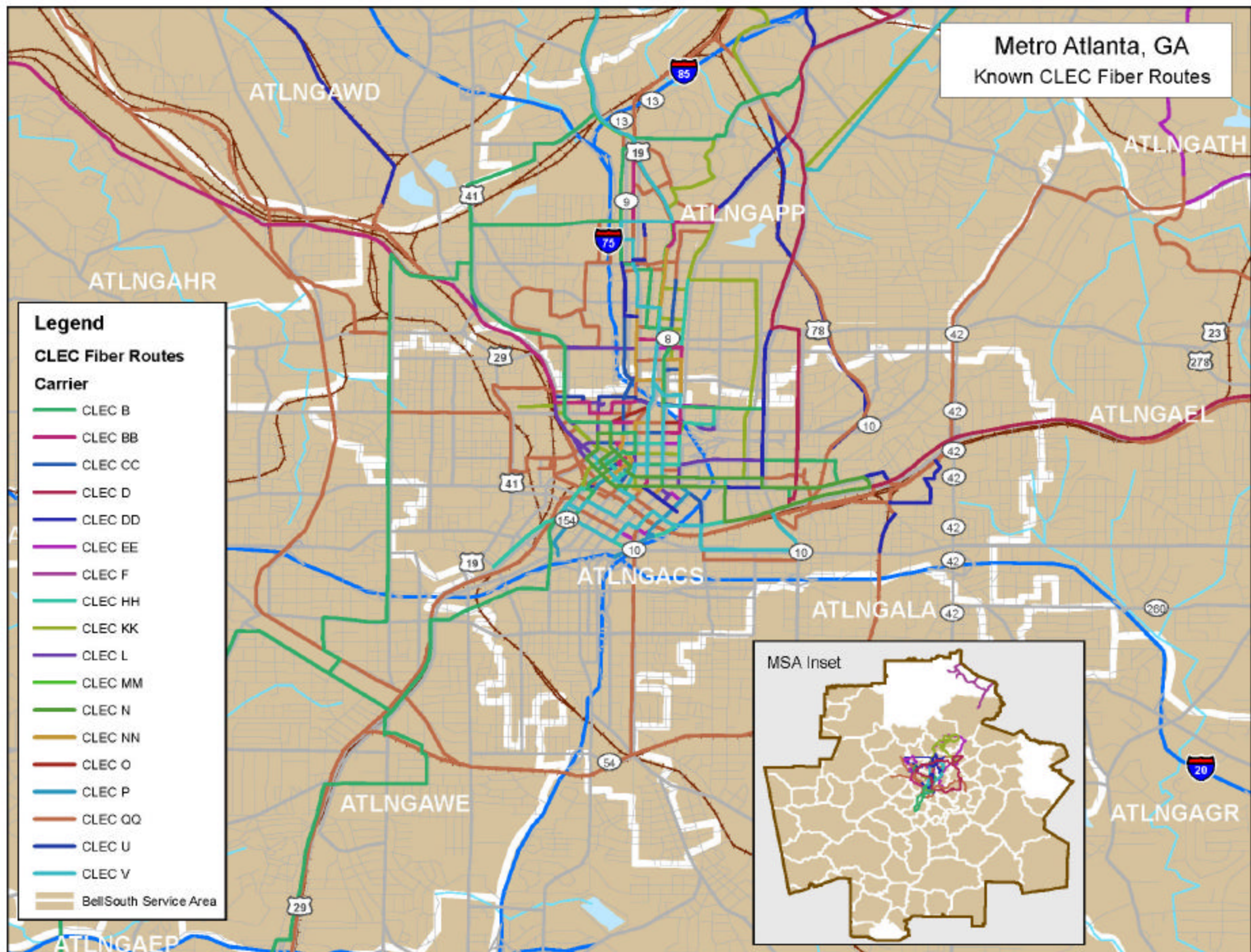
November 12, 2004

The Commission cannot lawfully find impairment in a market
“where the element in question – though not literally
ubiquitous – is significantly deployed on a competitive basis.”

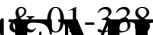
USTA I, 290 F.3d at 422

CLECs HAVE DEPLOYED EXTENSIVE FIBER NETWORKS

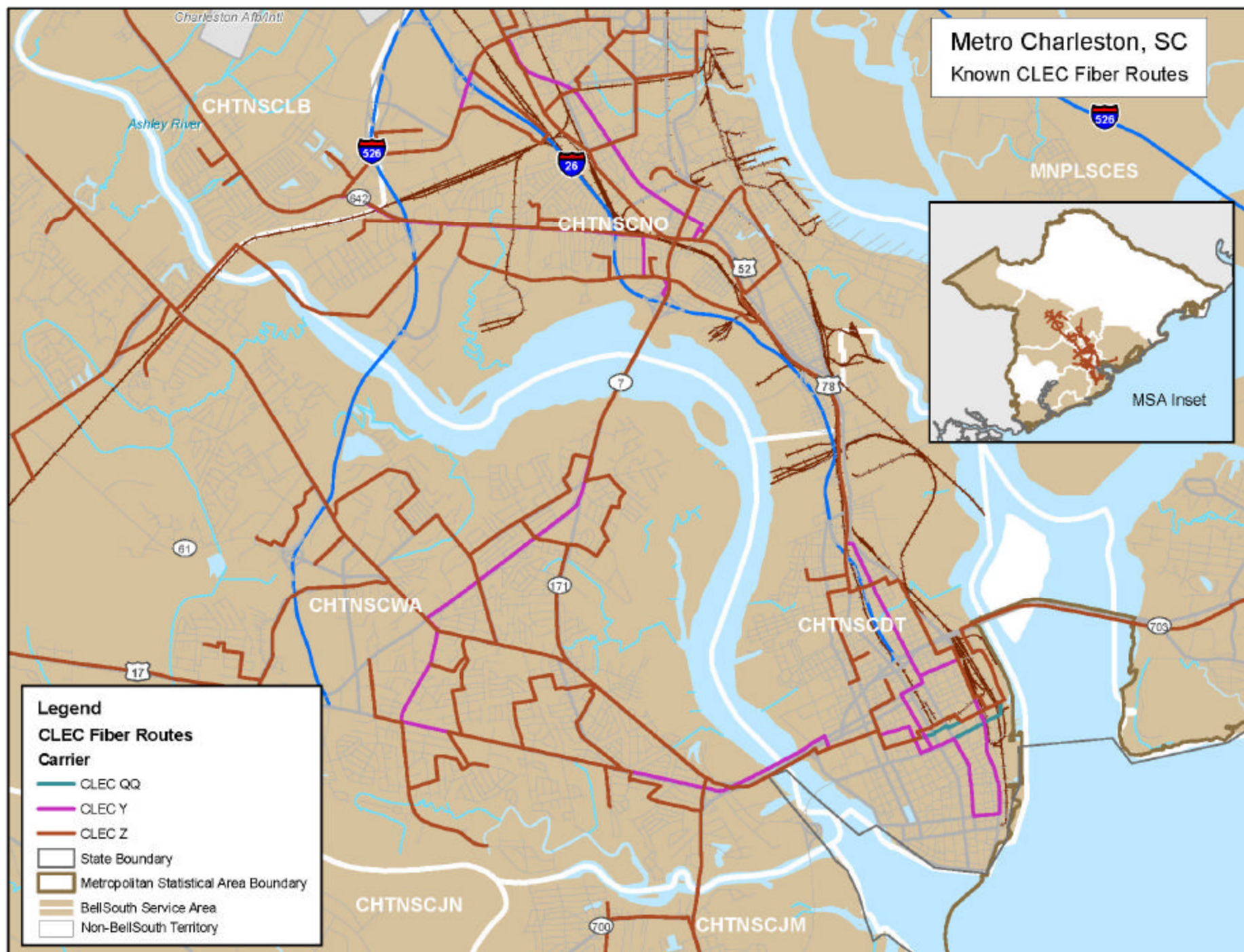
- As of 2003, CLEC networks consist of 324,000 route miles, an increase of 84% from 2001
- As of 2003, there were an average of 19 CLEC networks in the top 50 MSAs, an increase of 30% from 2001
- As of 2003, CLECs have deployed at least one network in 140 of the top 150 MSAs



01-338







The Commission cannot lawfully find impairment in a market where “competition is possible,” whether or not competition has actually developed or has developed to a lesser extent in that market.

USTA II, 359 F.3d at 571 & 575

The Commission cannot “simply ignore facilities deployment along similar routes when assessing impairment.”

USTA II, 359 F.3d at 575

CLECs ADMIT THAT THEY SELF-PROVIDE HIGH-CAPACITY TRANSPORT

- Advanced Telecom, which operates in four states in the Pacific Northwest, has self-provided transport on 25 of the 40 interoffice routes in its system (62.5%)
- KMC, which operates in 35 mid-size markets, self-provides transport along at least 245 routes in its system
- X/O, Xspedius, AT&T and MCI, which operate in numerous states, self-provide transport, but won't say where or under what circumstances

CLECs ADMIT THAT HIGH-CAPACITY TRANSPORT IS AVAILABLE FROM OTHER CARRIERS

- Eschelon, which serves 12 large and mid-size markets, found that approximately 60% of its collocations are in central offices served by an alternative transport provider and approximately 20% are served by multiple providers
- Broadview, which operates in the northeast U.S., is able to obtain transport from alternative providers along 25% of its routes
- Talk America, which is a facilities-based provider in Michigan, is able to obtain transport from alternative providers along 35% of its routes

CLECs ADMIT THAT HIGH-CAPACITY TRANSPORT IS AVAILABLE FROM OTHER CARRIERS (con't.)

- Advanced Telecom purchases interoffice transport from CLECs on 7% of its system routes and estimates that alternative transport is available along 20% of its system routes

CLECs ADMIT THAT THEY SELF-PROVIDE HIGH-CAPACITY LOOPS

- Bay Ring, which operates in New Hampshire, Massachusetts and Maine, has self-provisioned DS1/DS3 loops
- X/O self-provides DS1/DS3 channels connecting to its backbone network using its own fiber optic facilities
- Xspedius self-provides DS1/DS3 channels connecting to its backbone network using its own fiber optic facilities

CLECs ADMIT THAT HIGH-CAPACITY LOOPS ARE AVAILABLE FROM OTHER CARRIERS

- Advanced Telecom purchases 10% of its DS1 loops in Washington from another CLEC
- According to X/O, CLECs offer DS1/DS3 loops on a wholesale basis in approximately 5% of the buildings X/O serves
- Sprint has identified more than 30,000 buildings in which alternative loop facilities are available

**THIRD-PARTY DATA CONFIRM THE
COMPETITIVENESS OF THE HIGH-
CAPACITY SERVICES MARKET (Proprietary)**

REDACTED

THIRD-PARTY DATA CONFIRM THE COMPETITIVENESS OF THE HIGH- CAPACITY SERVICES MARKET (con't.)

- Study commissioned by the North Carolina Utilities Commission found that:
 - CLECs serve 60% of the non-switched digital private line – DS1 or greater connections in North Carolina, the vast majority of which (87.3%) are served through the CLECs' own facilities
 - CLECs have a 58% share of the switched DS1 service market in North Carolina, a substantial portion of which (32.2%) is served through the CLECs' own facilities

The Commission's impairment "cannot ignore intermodal alternatives."

USTA II, 359F.3d at 572-573

EXTENSIVE INTERMODAL COMPETITION EXISTS FOR HIGH-CAPACITY SERVICES

- A recent In-Stat/MDR study found that 41% of enterprises, 32% of middle market businesses, and 44% of small businesses were using cable modem service for high-capacity services
- Top cable companies currently provide high-capacity services to hundreds of thousands of business customers
 - Cox provides high-capacity service to more than 100,000 business customers in 18 markets nationwide
 - Time Warner Cable provides high-capacity service to more than 149,000 business customers nationwide

EXTENSIVE INTERMODAL COMPETITION EXISTS FOR HIGH-CAPACITY SERVICES (con't.)

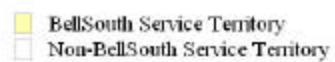
- Cable networks pass numerous businesses, and cable operators are aggressively extending their fiber to large office buildings
 - 60% of small to middle market businesses are located within a few hundred feet of a cable network, and 25% already have a cable drop
 - According to Cox, more than 320,000 businesses with a total telecom spend of \$3.3 billion annually lie within 100 feet of Cox's network
 - Cox expects to reach 25% of businesses within its franchise by end-of-year 2004

Cable Modem Service Availability

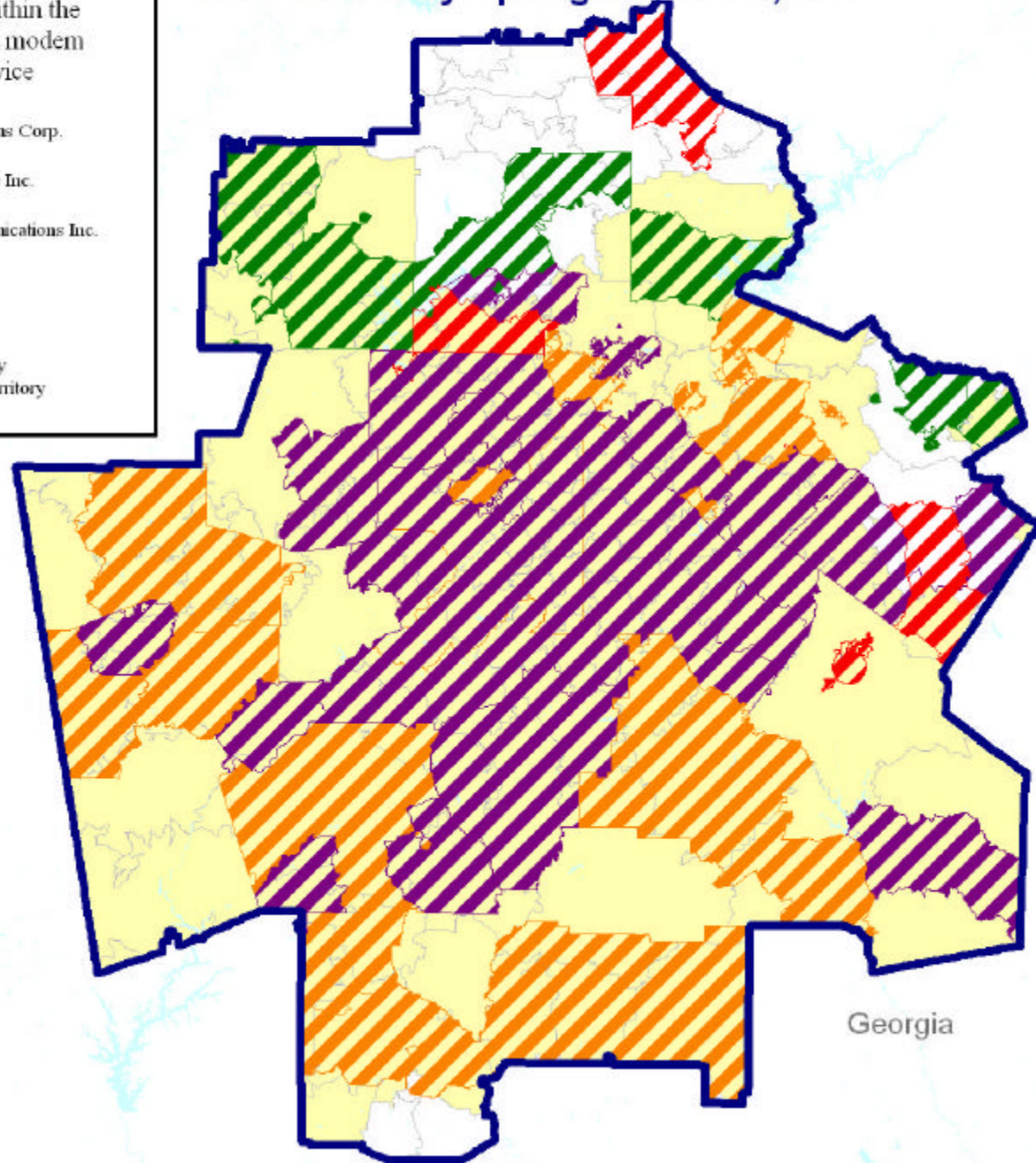
88% of the households within the MSA have access to cable modem service and VoIP service



Within MSA Boundary



Atlanta-Sandy Springs-Marietta, GA






Charleston-North Charleston, SC



South Carolina

Cable Modem Service Availability

74% of the households within the MSA have access to cable modem service and VoIP service

-  Comcast Cable Communications Inc.
-  Time Warner Cable
-  Remaining Carriers

Within MSA Boundary

-  BellSouth Service Territory
-  Non-BellSouth Service Territory

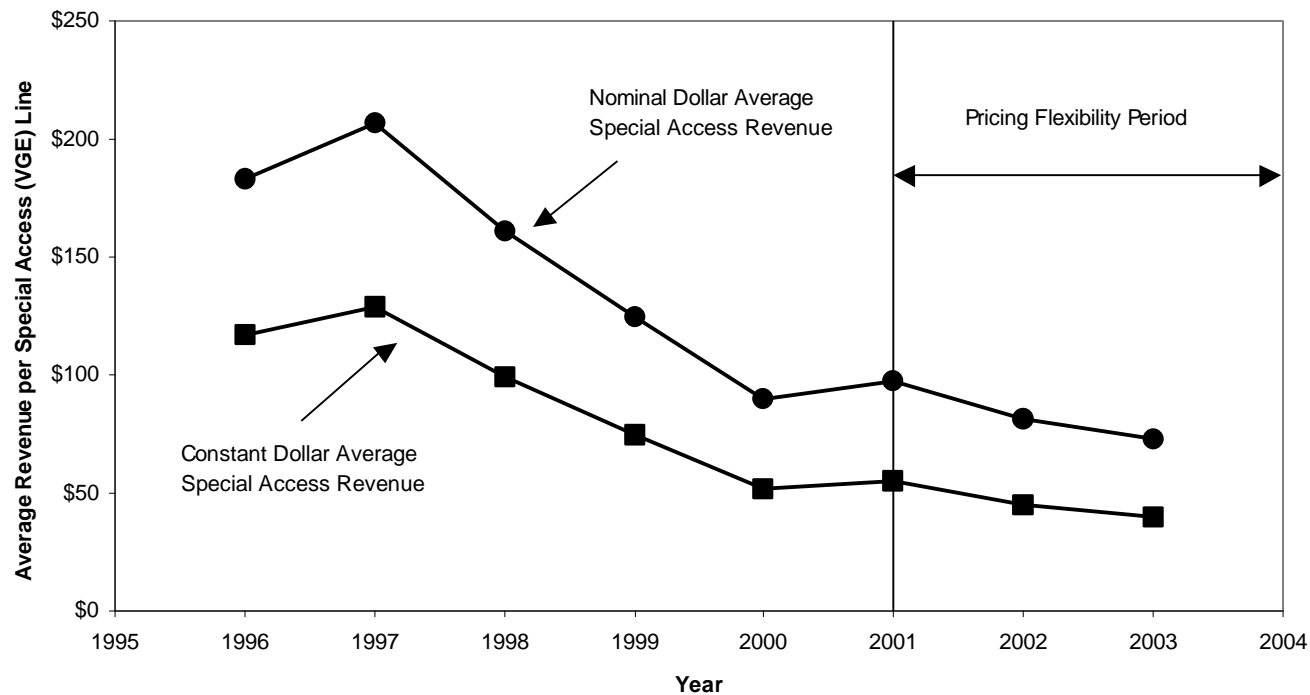
The Commission “must consider the availability of tariffed ILEC special access services when determining whether would-be entrants are impaired...”

USTA II, 359 F.3d at 577

CLECs ARE COMPETING SUCCESSFULLY FOR HIGH-CAPACITY SERVICES USING SPECIAL ACCESS

- CLEC use of special access is extensive
 - In BellSouth's region, there are 106,640 buildings served by CLECs using DS1 circuits either purchased as special access, UNEs, or both
 - 55,240 of these buildings (51.8%) are served exclusively by special access, and 12,050 (11.3%) are served by both special access and UNEs
 - 70% of all DS1 circuits purchased from BellSouth are in the form of special access
- Special access prices have fallen

BELLSOUTH'S SPECIAL ACCESS REVENUE (PER VOICE GRADE EQUIVALENT SPECIAL ACCESS LINE), 1996-2003

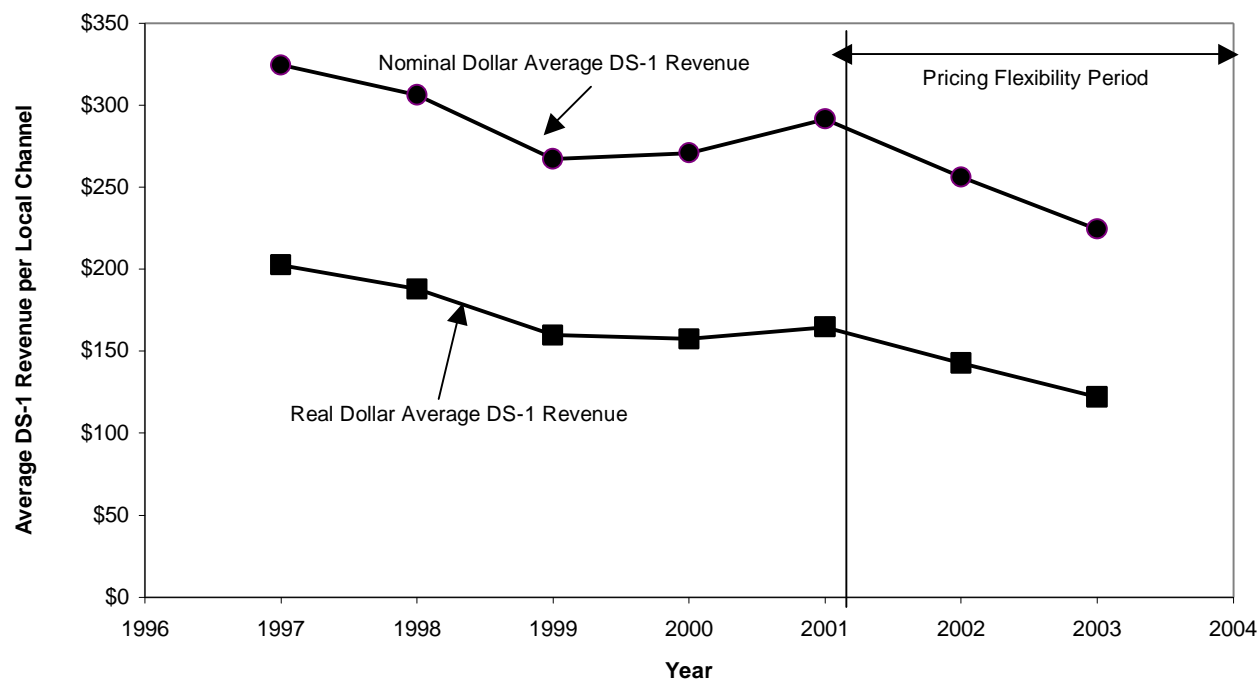


BellSouth Ex Parte Dockets 04-313
& 01-338

COMPOUND ANNUAL GROWTH RATE OF BELLSOUTH'S REVENUE PER SPECIAL ACCESS (VOICE GRADE EQUIVALENT) LINE

Period	Nominal CAGR	Real CAGR
Full Period (1996-2003)	-12.36%	-14.33%
Price Caps (1996-2001)	-11.84%	-13.95%
Pricing Flexibility (2001-2003)	-13.65%	-15.29%

BELLSOUTH'S DS-1 REVENUE PER LOCAL CHANNEL, 1997-2003



COMPOUND ANNUAL GROWTH RATE OF BELLSOUTH'S REVENUE PER DS-1 LOCAL CHANNEL

Period	Nominal CAGR	Real CAGR
Full Period (1997-2003)	-5.94%	-8.06%
Price Caps (1997-2001)	-2.59%	-4.96%
Pricing Flexibility (2001-2003)	-12.30%	-13.96%

BELLSOUTH'S PROPOSAL

- CLECs are not impaired without access to unbundled high-capacity loops, transport and dark fiber in any central office with 5,000 or more business lines
- CLECs should not be entitled to obtain entrance facilities on an unbundled basis or obtain unbundled facilities to provide wireless or interexchange services
- CLECs should be prohibited from converting special access to UNEs

BELLSOUTH'S PROPOSAL IS REASONABLE

Number of Fiber-Based Collocators	Central Offices By No. of Business Access Lines	
	Below 5,000	Above 5,000
0	90.1%	9.9%
1+	10.2%	89.8%
2+	4.5%	95.5%
3+	0.6%	99.4%
4+	0.8%	99.2%

Central Office by No. of Business Access Lines	Percent of Central Offices with Known CLEC Lit Buildings	Percent of Central Offices
Below 5,000	14.5%	72.7%
Above 5,000	85.5%	27.3%

BELLSOUTH'S PROPOSAL IS CONSISTENT WITH *USTA II*

- BellSouth's proposal takes into account markets where transport and loops have been “significantly deployed on a competitive basis”
- BellSouth's proposal takes into account markets where “competition is possible”
- BellSouth's proposal considers intermodal alternatives
- BellSouth's proposal considers tariffed special access services